THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

W.P.No. 19674 OF 2005

29th December, 2005

Between:

A.Baswa Reddy …Petitioner

A N D

1. The Government of Andhra Pradesh

rep. By its Principal Secretary, Panchayath Raj,

Department, Secretariat,Hyderabad and

Others …Respondents

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION No. 19674 OF 2005

O R D E R :

1. This writ petition has been filed by A.Baswa Reddy with a prayer to issue a writ order or direction more particularly one in the nature of writ of certiorari calling for the records of Government of Andhra Pradesh represented by its Principal Secretary, Panchayath Raj Department, Secretariat, Hyderabad-1st respondent which culminated in issue of G.O.Ms.No.315, dated 3-9-2005 and quash the same.

2. The facts of the case as set out in the writ affidavit, in brief are: -

Petitioner-A.Baswa Reddy was elected as Chairman of Zilla Parishad, Warangal in the year 2001. He belongs to Telugu Desam Party. He contested for assembly constituency of Jangaon in 2004 elections against Mr. Ponnala Lakshmaiah, Congress (I) candidate, who won the election and became a Minister. Congress-(I) came to power in the State in the Assembly elections held in 2004 and since then Ponnala Lakshmaiah made his efforts to dislodge the petitioner. As part of the scheme, he got moved “No Confidence Motion” on 24-5-2004 which came to be defeated on 15-6-2004. A show cause notice dated 10-6-2005 vide Lr.No.1686/Mdl-11A/2005 comprising as many as fourteen allegations came to be issued to the petitioner by the 1st respondent purported to be exercising powers under the provisions of Section 249(1) of the Panchayath Raj Act. The petitioner submitted explanation on 17-6-2005. Disciplinary proceedings have also been initiated by the 1st respondent against the Chief Executive Officer of Zilla Parishad, Warangal. Pending departmental Enquiry, an order of suspension came to be passed against Chief Executive Officer. Assailing the order of suspension, the Chief Executive Officer filed O.A. and obtained interim stay of all further departmental proceedings against him. The petitioner brought to the notice of the 1st respondent about the orders passed by the A.P. Administrative Tribunal, whereby and whereunder departmental proceedings against the Chief Executive Officer have been stayed. In case the proceedings initiated by the Chief Executive Officer in the Andhra Pradesh State Administrative Tribunal conclude in his favour, the allegations levelled against the petitioner would not be well founded. However, the Government issued G.O. 315, dated 3-9-2005 impugned in the writ petition removing the petitioner from the

office of the Chairman, Zilla Parishad, Warangal. The orders passed by the 1st respondent in removing the petitioner from the office of the Chairman, Zilla Parishad, Warangal is illegal, unconstitutional, malafide and motivated. The action of the Government, according to the petitioner, amounts to malafide exercise of powers. For better understanding of the grievance of the petitioner, I deem it appropriate to refer paras 11 to 14 of the writ affidavit and it is thus;

> "*It is submitted that 1st respondent purporting to act under the provisions conferred under Section 249-1 of the Panchayat Raj Act issued a show cause notice dated 14-6-2005 comprising of as many as 14 allegations which have been replied to by me by my representation dated 17-6-2005. It is submitted that each of the said allegation would show one or the other guidelines or order of the Government which under Provisions of Sec. 248 of the Act wcould be issued only to the Chief Executive Officer and on the contravention if any of the said guidelines or order as the case maybe of the Government by the Chief Executive Officer disciplinary action against the CEO must be taken and only after finding CEO guilty of such contravention any action against the Chairperson could have been taken inasmuch as the action contemplated against the Chairperson Under Section 249 is only not directing the CEO or not making the Chief Executive Officer to implement the guidelines of the Government.*
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> *A copy of my representation to the show cause notice dt. 14-6-2005 is filed in the material papers contents whereof are not repeated herein in order to avoid the bulk of the record.*
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> *It is submitted that without prejudice to any of my contentions referred to above I had given an explanation to the show cause notice dt.10-6-2005 explaining the factual and legal position. The said explanation dt. 10-6-2005 may be read as part and parcel of this affidavit.*
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> *It is submitted that by the impugned order none of my statements, averments and contentions made in my reply dated 17-6-2005 have been referred at all. From the reading of the impugned order it is also obvious that the 1st respondent passing the impugned order does not appear to have applied its mind to the very provisions of the Act viz., Section 248 and 249 thereof before passing the impugned order, Section 249 of the Act and the action supposed tobe taken is made subject to clause (2) of Section 248 i.e. to say on proof of the fact that the Chief Executive Officer has failed to implement the directions referred to Sub-Section (1) of Sec. 248 and that such failure on*

the part of the Chief Executive Officer should lead to disciplinary action against him. The sub-section (2) of Sec. 248 only puts an obligation on the Chairman to see that the Chief Executive Officer implements the directions but not the implementation of the Government order by the Chairman himself. The contravention if any, by the Chairman, Zilla Parishad in respect of the violation of provisions by the Chief Executive Officer is only to see that the CEO has not contravened any directions referred to sub section (1) of Sec. 248".

3. 1st respondent filed counter affidavit. It is stated in the counter affidavit that the District Collector, Warangal brought to the notice of the Government certain allegations levelled by the Vice Chairman, Zilla Prishad, against the Chairman, Zilla Parishad, Warangal i.e. petitioner herein in conducting and execution of various Zilla Parishad works. The Government appointed the Additional Commissioner, Panchayat Raj, Hyderabad as Enquiry Officer to enquire into the allegations levelled against the Chairman, Zilla Prishad vide G.O.Rt.No.758, dated 2-5-2005. The Enquiry Officer submitted report on 4.6.2005. After examining the enquiry report, Government issued a show cause notice to the petitioner through Lr.No.1686/Mdl-IIA/2005, dt.10-6-2005 along with the enquiry report calling upon him to explain as to why he should not be removed from the office of the Chairman U/Sec. 249(1) of A.P. Panchayat Raj Act, 1994. The petitioner submitted his explanation denying all the allegations made against him. The Government, on considering the material brought on record and on hearing the petitioner, passed orders in G.O.Ms.No.315 Panchayat Raj and Rural Development (Mandal-11A) Department, dated 3-9-2005 removing the petitioner from the office of Chairman, Zilla Parishad, Warangal. The allegation made by the petitioner that after the change of the Government in May, 2004 attempts were made to dislodge him from the office of the Chairman, Zilla Parishad and no confidence motion was moved against him at the instance of Sri Ponnala Lakshmaiah was not borne out by the record. The record discloses that out of the total 50 Z.P.T.C. members, 25 members moved the No Confidence Motion. The break up of the political affiliations of the 25 members who moved no confidence motion is; 20 members belong to TDP, 2 members belong to BJP which is the ally of the TDP, 2 belong to INC and one belongs to TRS. When the motion was put for voting on 15-6-2004, 20 members out of 25 who signed the no confidence motion

remained absent. Out of the 5 members who were present on the day of the meeting, three members belong to TDP and others were; the Chairman and the Vice Chairman. The record falsifies the allegations of the petitioner that no confidence motion was moved at the instance of Sri Ponnala Lakshmaiah who is said to be his opponent in 2004 Assembly elections. The petitioner failed to perform the functions of Chairman as per Section 193 of A.P.Panchayath Raj Act, 1994. The petitioner grossly violated the ban orders on transfers issued in G.O.Ms.No.767, dated 21-8-2002 and G.O.Ms.No.16 Finance Department, dated 25-1-2005. The show cause notice issued to the petitioner was preceded by an enquiry on a complaint made against the petitioner by the Vice Chairman, Zilla Parishad, Warangal. The show cause notice was issued to the petitioner under Section 249(1) of A.P.Panchayath Raj Act and not under Section 248 of the said Act. The government examined all the material on record and found that the petitioner had violated the orders of the Government. Para 9 of the counter affidavit is to be noted and it is thus:

> "*With regard to the contention of the petitioner in para 10 that as many as 10 items of the so called report of the enquiry officer has to be proposed, initiated and implemented by the Executive Authority, after obtaining the approval of the Chairman clearly shows that the Chairman Zilla Parishad while approving any recommendations will be aware of all those things so recommended.*
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> a. *According to the Chapter 6 of SGRY guidelines, no work can be taken up unless it forms the part of Annual Action plan. Contrary to this, Sri Adaboina Basava Reddy, Chairman, Zilla Parishad, Warangal has neither got prepared the annual action plan nor followed the due procedure. He sanctioned the works in piecemeal manner without preparing the Annual Action Plan which is contrary to the provisions of the SGRY guidelines.*
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> b. *The Government through G.O.Ms.No.767 Finance Department, dt. 21-8-2002 and G.O.Ms.No.16, dt. 21-5-2005 have imposed ban on the general transfers of the employees. Contrary to this Government order, Sri Adaboina Basava Reddy, Chairman, Zilla Parishad, Warangal has effected 183 transfers of the employees willfully, intentionally by misusing and abusing his official position, though the staff submitted to the Chairman in the respective files that there is a ban*

on transfers. In spite of knowing about the ban on transfer the petitioner issued orders effecting the transfers of about 183 employees of Zilla Parishad. Since it amounts to violation of Government order, the impugned order is justified u/s 249 as is mentioned in the impugned order.

c. *SGRY Social Forestry; according to the guidelines No. 3,6 and 8 the Social Forestry Works are supposed to be taken up only in the Rural areas to provide wage employment for wage seeking families. Contrary to this, Rs.10 lakhs worth of work under 10% SGRY Social Forestry were taken up for the beautification of the Zilla Parishad, premises and for the construction of Watchman quarter behind Zilla Parishad building. In fact the said buildings same falls under Municipal/Urban area which shows how the petitioner abused his position, therefore, the action u/s 249 for this also is justified.*

d. *All works are to be sanctioned with the approval of the concerned Standing Committees and General Body Meetings. But contrary to this, the S.F.C./R.R.M. works were sanctioned in piecemeal basis without any action plan pending approval of the standing Committees and General Body, the files relating to the sanction of works are not even routed through the Zilla Parishad officials it was directly approved by the petitioner.*

e. *According to the SGRY Special Component Guidelines, the works are to be taken up to provide wage employment for wage seeking families in the drought effected mandals. The cash and kind are to be paid to the wage seekers on daily/weekly basis at the work site by the Executing Agencies. Contrary to this, without budget provision, (31) works were sanctioned showing the grants to be released during the year, 2005-06 duly dovetailing the SGRY (S.C.)Rice for the year 2004-05. It is clear case of willful abuse of official position".*

The Government examined each and every contention raised by the petitioner and came to a conclusion with certainty that the petitioner misused and abused his position as the Chairman of Zilla Parishad. The petitioner failed to perform the functions in accordance with Section 193 of the A.P.Panchayath Raj Act, 1994 and willfully omitted and abused his position and power vested in him and therefore the 1st respondent has passed the orders in G.O.Ms.No.315 Panchayat Raj and Rural Development (Mandal 11-A) Department, dated 3-9-2005 removing the petitioner from the office of the Chairman Zilla Parishad, Warangal in exercise of powers under Section 249 of A.P.Panchayat Raj Act, 1994 and the action of the 1st respondent is just and proper.

4. Heard learned Senior Counsel appearing for the petitioner and learned Advocate General appearing on behalf of the respondents.

5. Learned Senior Counsel appearing for the petitioner submits that since the proceedings initiated against the Chief Executive Officer are under challenge in A.P. Administrative Tribunal and any action against the petitioner would be premature and in case O.A. being allowed, the grounds on which the show cause notice has been issued to the petitioner would no more be available. He further submits that the post of Chairman of the Zilla Parishad is of supervisory nature and the Chief Executive Officer is responsible for implementing the Government Orders. He would further submit that files relating to transfers of various employees referred in the enquiry report originated from the Chief Executive Officer and therefore if there are any violations of the Government orders with regard to the transfers, it was the Chief Executive Officer who was responsible and not the petitioner. In elaborating his arguments he would contend that the petitioner as Chairman of Zilla Parishad is only an approving authority and even if the transfer orders are assumed to be irregular, the Government in exercise of review powers under Section 264 of A.P. Panchayat Raj Act, 1994 would have interfered with the transfer orders instead resorting to the extreme step of removing the duly elected Chairman of Zilla Parishad. He refers Sections 186, 193, 264, 247, 248 and 249 of the A.P. Panchayath Raj Act, 1994 in support of his submissions. He lastly submits that the action of the State Government lacks bona fides and the exercise of powers by the

State Government suffers from legal malice and ill will. He explains the legal meaning of malice as 'ill-will or spite towards a party and any indirect or improper motive in taking an action. This is sometimes described as malice in fact. Legal malice or malice in law means something done without lawful excuse. In other words, it is an act done wrongfully and willfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard of the rights of others. In support of his submissions, reliance has also been placed on the decisions of Supreme Court ***Shamarao Vs. Parulekar, Tirath Singh Vs. Bachittar Singh, Mohinder Sing Gill Vs. The Chief Election Commissioner, New Delhi, S.Pratap Singh Vs. The State of Punjab,Rustom Cavasjee Coop Vs. Union of India, Barium Chemicals Limited, Vs. Company Law Board*** and the decision of this Court in ***Amjadullah Khan Vs. Government of A.P. Municipal Adminstration and Urban Development Department***

6. It is vehemently contended by the learned Senior Counsel that the party which came to power in the State during the year 2004 Assembly elections made a serious attempt to unseat the petitioner from the post of Chairman, Zilla Parishad, Warangal and the said party being unsuccessful in the No Confidence Motion resorted to issue a show cause notice making out certain unfounded allegations to unseat the petitioner from the post of Chairman, Zilla Parishad, Warangal. The contention prima facie appears to be sound. But on close scrutiny, it does not last long to be rejected, as out of 25 members who signed the No Confidence Motion, 20 being of his own party i.e. T.D.P. This fact is evident from the Counter affidavit of the respondents. There seem to be no reply affidavit from the petitioner contradicting this factual aspect. For better appreciation of this factual aspect, I may refer para 2 of the counter affidavit and it is thus:

> "*In reply to para 4 of the affidavit, it is submitted that the petitioner was elected as Chairman of Zilla Parishad Warangal in the year 2001. The allegation made by the petitioner that after the change of the Government in May, 2004 attempts were made to dislodge him from the office of the Chairman Zilla Parishad, and no confidence motion was moved against him by Sri Ponna Laxmaiah , on behalf of the Congress is not borne out by the record. The record discloses that out of the total 50 Z.P.T.C. members, 25 members moved the No Confidence Motion. The break up of the political affiliations of*

the 25 members who moved no confidence motion are given as below:

20 members belong to TDP

2 members belong to BJP which is the ally of the TDP

2 belong to INC and

1 belongs to TRS

When actually the motion was put for voting on 15-6-2004 20 members of the 25 who signed the no confidence motion were absent from the meeting. Out of the 5, who were present on the day of the meeting 3 members belong to TDP the other persons were the Chairman and Vice Chairman. It is therefore, evidence that the no confidence motion was stage managed so as to avoid such moves by some other political party at a later point of time in view of the ban contained under Section 245 of Act. This was done as the party to which the petitioner belonged, lost the power, and as a different political party came to be power on 14-5-2004 the No Confidence Motion was moved within 10 days i.e on 24-5-2004. The record discloses that only 2 Congress members signed the No Confidence Motion and others are either from party of petitioner or their political allies and they too obtains form the meeting to consider their own motion of no confidence. So, the allegation made that the other political party was bent upon to remove him from the post of Chairman Zilla Parishad may not be correct.

It is submitted that Sri Adaboina Basava Reddy, Chairman, Zilla Parishad, Warangal, the petitioner grossly failed to perform the functions as per Sec. 193 of A.P.P.R. Act, 1994".

7. Learned Advocate General appearing for the respondents submits that the petitioner effected transfers of 183 employees in Zilla Parishad, Warangal in violation of the Government Orders. He further submits that he misused the funds of Zilla Parishad and spent the amounts under SGRY scheme indiscriminately without there being any action plan. It is further submitted by him that the petitioner misused the Zilla Parishad funds by taking 31 works without getting the budget approved by the Government. It is also submitted by him that the petitioner diverted the funds of social forestry for beautification of the Zilla Parishad premises and construction of watchman quarters behind Zilla Parishad office contrary to the guidelines of SGRY.

He placed on record the photo stat copies of the note files relating to the transfers of employees during the tenure of the petitioner as the Chairman, Zilla Parishad, Warangal.

8. Before dwelling on rival contentions of the parties, I deem it appropriate to consider the extent of judicial review contained in Article 226 of the Constitution of India. The scope and extent of power of Judicial review of the High Court contained under Article 226 of the Constitution of India would vary from case to case, the nature of the order, the relevant statute as also the other relevant factors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi judicial or administrative. The power of judicial review is not intended to assume a supervisory role or done the robes of omnipresent. The power is not intended either to review governance under the rule of law nor do the Courts step into the areas exclusively reserved by the supreme lex to the other organs of the State. Decisions and actions which do not have adjudicative disposition may not strictly fall for consideration before a judicial review Court. The limited scope of judicial review succinctly put are: (i) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of administrative bodies; (ii) A petition for a judicial review would lie only on certain well defined grounds; (iii) An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal, (iv) A mere wrong decision without anything more is not enough to attract the power of judicial review. The supervisory jurisdiction conferred on a Court is limited to seeing that Tribunal functions within the limits of its authority and that its decisions do not occasion miscarriage of justice, (v) The Courts cannot be called upon to undertake the Government duties and functions. The Court shall not ordinarily interfere with a policy decision of the State. Social and economic belief of a Judge should not be invoked as a substitute for the judgment of the legislative bodies.

9. It is well settled that while exercising the power of judicial review the Court is mere concerned with the decision making process than the merit of the decision

itself. But, while examining and scrutinizing the decision making process it becomes inevitable to also appreciate the facts of a given case as otherwise the decision cannot be tested under the grounds of illegality, irrationality or procedural impropriety. How far the Court of judicial review can re-appreciate the findings of facts depends on the grounds of judicial review. For example, if a decision is challenged as irrational, it would be well-nigh impossible to record a finding whether a decision is rational or irrational without first evaluating the facts of the case and coming to a plausible conclusion and then testing the decision of the authority on the touchstone of the tests laid down by the Court with special reference to a given case. The system of judicial review is radically different from the system of appeals. While hearing an appeal, the Court is concerned with the merits of a decision; is it correct? While subjecting some administrative Act or Order to judicial review, the Court is concerned with its legality; is it within the limits of the powers granted? On appeal the question is right or wrong? On review the question is lawful or unlawful.

10. The genesis for initiation of proceedings against the petitioner is the complaint given by the Vice Chairman, Zilla Parishad, Warangal and other Z.P.T.C. Members. The Additional Commissioner enquired into the allegations leveled against the petitioner and submitted a report dated 4-6-2005. Enquiry seems to have been conducted on certain allegations. For convenience sake it can be said that the allegations comprise ten charges;- firstly, misuse of amounts earmarked for social forestry under Sampoorna Grameena Rozgar Yojana (SGRY); secondly, execution of works with SFC grants dovetailed with SGRY (S.C.) rice during the last three years in piecemeal manner without proper approval of the concerned committees of the Zilla Parishad; thirdly, execution of RRM works without there being any action plan; fourthly, taking up works from Zilla Parishad General Funds in a piece meal manner without considering the need and the balance; fifthly, demanding 5% of the commission for passing bills and making payments to the Contractors who have executed works under SFC; sixthly, failure to follow the procedure in carrying out repairs to the Z.P. Hall, Z.P. Guest House, Quarters and purchase of furniture, intercom, A.C. Stationary etc., during last three years; seventhly, failure to follow the procedure in drilling of R.W.S. Bore wells, purchase of motors etc., during last three years; eighthly, illegal demand for release of funds for RWs works; ninthly, utilization, sanction of individual beneficiary schemes under SGRY 22.5% S.C./S.T.

component for 2003-04; and tenthly, deployment of Officers/Staff of Z.P. and their transfers contrary to Government Orders during the last three years. The Enquiry Officer did not find any material to substantiate the charges 6,7 and 9. A show cause notice dated 10-6-2005 came to be issued to the petitioner by the 1st respondent in exercise of powers conferred under Section 249(1) of A.P. Panchayath Raj Act, 1994 calling upon him to explain as to why he should not be removed from the post of Chairman, Zilla Parishad, Warangal. Para 3 of the show cause notice needs to be noted and it is thus:

> "*In this regard, serious irregularity is made out against you that you have diverted ZP general fund amounts towards salaries/pensions and the ZP went ahead with sanction of (31) works purporting to be taken up with ZP general funds pertaining to the year 2005-06, though the budget for the next financial year 2005-06 is yet to be approved by the ZP General Body and thereafter by Government. The Enquiry Officer further revealed that ZP is not running on proper lines and the Chairman has failed to act as per the Government orders issued from time to time, muzzling the official voice in ZP and misused his power and persistently failed in properly discharging his duties violating the established norms and procedures. Thus, you failed to perform your functions and duties as per the Act".*

11. The petitioner submitted explanation dated 17-6-2005 to the show cause notice. His explanation, in brief, is: -

The scheme of Social Forestry is to be initiated by the Deputy Conservator of Forest, Warangal and implemented by the Chief Executive Officer, Zilla Parishad in coordination with each other. The Chairperson of the Zilla Parishad has no role in spending the amounts allotted under social forestry. The RRM works are being taken up based on the representations of the Public representatives, and the proposals are submitted by the Executive Engineer PR Division concerned to the Chief Executive Officer, Zilla Parishad, Warangal for perusal of the Chief Executive Officer, Zilla Parishad, Warangal. After approval of the proposals by the Chief Executive Officer, the files are circulated to the Chairman, Zilla Parishad Warangal. The Chief Executive Officer issues orders of administrative sanction on obtaining the approval of the Standing Committees/General body of Zilla Parishad. The

Chairperson does not come into the picture of the implementation of these works. Sanction of 50 community halls worth about 75 lakhs in Sangam Mandal is not true. There were only 34 community halls and youth buildings, which were sanctioned by the Collector as proposed by the Zilla Parishad. The total cost of community halls including the Rice component was Rs.51,42,500/- (Rs.30,25,000/- cash and Rs.21,17,500/- rice component). This allegation would not have been countenanced at all by any responsible officer of a rank of Additional Commissioner. The Additional Commissioner has not referred to any written or sworn statement of the Vice Chairman. Items No. 6,7 and 9 need not be referred to inasmuch as the Enquiry Report itself eloquently declares them as non-existing. With regard to Item No.10 which refers deployment, transfers and promotions of the members of the staff; the G.Os or directions of the Government are within the meaning of Section 248 and the violation thereof, if any, is the sole responsibility of the Chief Executive Officer and unless disciplinary action is taken against the Chief Executive Officer for violation of the directions contained in the G.Os, the action proposed against the Chairperson under Section 249 will amount to an illegality and an action without jurisdiction. It is suffice to refer para VIII of the explanation submitted by the petitioner to the show cause notice and it is thus:

> "*Now coming to the last part of the report (without any para number thereto) namely with reference 31 works purported to be taken up under Zilla Parishad funds for the year 2005-06 it is submitted as follows:*
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> *At the outset these works are only proposals sanctioned to be taken during the year 2005-06.*
>
> *As given in the schedule hereof each one of the 31 works has been proposed by the Chief Executive Officer and the Chairman and ultimately by the Collector. Each one of the works was also sanctioned by the concerned standing committee namely either by Standing Committee NO. 7 or by Standing Committee No.1 and some by the General Body itself. The copies of the all proceedings reflecting the proposals of the CEO and the sanction by the Chairman or the collector can always be inspected or verified by your good selves. While I am not aware whether the Enquiry Officer has looked into them I have no objection if the same can once again be inspected either by the same Enquiry Officer or your good selves. The sheet volume of those sanctions prevents me from filing the copies making this reply a voluminous and bulky one. Suffice it to submit that every such work was*

proposed and sanctioned in due course by the Standing Committees 1 and 7 and General Body at the recommendation of the Chief executive Officer and approval of the Collector. In any case no work so far has been implemented nor even undertaken. The statement that the minutes are also not properly recorded is also not correct which would be found to be untrue on a proper inspection of the files. In any case the allegation the Chairman has failed to act as per the Government orders from time to time is once again a contravention of provisions of Sec. 248 r/w Sec. 249.

'I wish to bring to your kind notice that paragraph No. 3 of the show cause which reads as follows:

'In this regard, serious irregularities is made out against you that you have diverted Zilla Parishad General Fund amount towards salaries pensions and the Zilla Parishad went ahead with sanction of 31 works etc., etc., Obviously there is a jumbling of two different transactions namely irregularity in payment of salaries and pensions and sanction of 31 works etc., while these 31 works have been referred to by the Enquiry Officer in his report which has been replied to by me herein above, there is no reference whatsoever in the report of the Enquiry Officer of any serious irregularity as regards the salaries and pensions etc., Obviously this reference to irregularity in your show cause notice in regard to salaries and pension is a mistake which may kindly be appreciated and treated as nonest. IN any case the payment of salaries and pensions is a matter of record of the Zilla Parishad and the Enquiry Officer was himself not obviously convinced of any irregularity in that regard.

'From the narration of the facts above and even from the contents of the so called Enquiry Report it is eloquently clear that entire attempt is based on malafides to oust me from the elected post of Zilla Parishad merely because I belong to the party in opposition i.e. the Telugu Desam Party having failed in their attempt to oust me by process of no confidence this false and fictitious allegations are made.

Therefore, request you to kindly drop the proposed action in the show cause notice in the interest of justice and good conscious.".

13. Learned Senior Counsel appearing for the petitioner would contend that all the transfers have been effected on the proposals put up by the Chief Executive Officer of the Zilla Parishad, Warangal and if there are any violations of the Governmental orders in effecting the transfers, it was the Chief Executive Officer who was responsible.

14. Learned Advocate General contends that the transfers have been effected under the orders of the petitioner inspite of the fact of bringing to his notice the Governmental orders with regard to ban on transfers.

15. Section 248 deals with powers of the Government to issue directions, which read as follows:

> "*248 Power of Government to issue directions: (1) Notwithstanding anything contained in this Act, it shall be competent for the Commissioner or the Government to issue such directions as they may consider necessary to the Executive Authority, Mandal Parishad Development Officer or the Chief Executive Officer for the proper working of the Gram Panchayat, Mandal Parishad, or as the case may be, the Zilla Parishad or for the implementation of the resolutions thereof and the Executive Authority, Mandal Parishad Development Officer or as the case may be, the Chief Executive Officer shall implement those directions, failing which, he shall be liable for disciplinary action under the relevant rules.*
>
> 2. *The Sarpanch of the Gram Panchayat, the President of Mandal Parishad or as the case maybe, the Chairman of the zilla Parishad shall ensure that the Executive Officer, Mandal Prarishad Development Officer or as the case maybe, the Chief Executive Officer implements the directions issued by the Government under sub-section(1) and shall not do anything in derogation to the directions of the Government aforesaid. The Sarpanch, the President or the Chairman who contravenes the provisions of this section shall be deemed to have willfully omitted or refused to carry out the orders of the government for the proper working of the Gram Panchayat, Mandal Parishad or as the case may be, the Zilla Parishad within the meaning of Section 249".*

16. By referring the provisions of Sec.248, learned senior counsel would contend that it is the Chief Executive Officer who shall implement the Government Orders and in case of contravention of the Government Orders, the Chief Executive Officer shall be liable for disciplinary action and therefore, the petitioner as Chairman of Zilla Parishad cannot be made liable for non-implementation of the Government Orders. I do not see any substance in his contention for the reason that Sec.248 comprises two sub sections. Sub Section (1) obligates the Chief Executive Officer to implement the directions of the Government. Sub-Section (2) cast a duty on the Chairman to see that Chief Executive Officer implement the directions and he shall not do anything in derogation to the directions of the Government. The Chairman who contravenes the provisions of this section shall be deemed to have willfully omitted or refused to carry out the orders of the Government for the proper working of the Gram Panchayat, Mandal Parishad or as the case may be, the Zilla Parishad within the meaning of Section 249.

17. A strenuous contention has been made by learned senior counsel that pending proceedings against the Chief Executive Officer before the Andhra Pradesh Administrative Tribunal, no action can be initiated against the petitioner. What he means to say is that in case the O.A. filed by the Chief Executive Officer questioning the disciplinary proceedings initiated against him is allowed, there would not be any valid grounds to initiate action against the petitioner. I do not see any merit in his contention since sub-section (2) of Section 248 clearly mandates that the petitioner as Chairman shall see that the Chief Executive Officer implements the directions and he shall also not do anything derogatory to the directions of the government. Even if the O.A. filed by the Chief Executive Officer ends in his favour, the petitioner cannot be absolved of the charges leveled against him.

18. The principal allegations leveled against the petitioner are:

Firstly, spending the amounts under Sampoorna Grameen Rozgar Yojana (SGRY) scheme without there being any action plan prepared; secondly, effecting transfers

in spite of ban orders of the Government.

19. Learned senior counsel appearing for the petitioner further submits that all the administrative sanctions for spending the amounts under SGRY scheme got the approval of the respective standing committees and therefore the petitioner cannot be said to have violated the guidelines.

20. Learned Advocate General appearing for the respondents submits that for spending any amount under SGRY scheme an action plan is required to be approved and thereafter works are to be sanctioned. He refers to Chapter 6 of the Guidelines issued in respect of SGRY scheme. Chapter 6 of the guidelines deals with the planning, works and execution of SGRY scheme. The relevant portion of the Chapter 6 reads as under:

> " **6.1.1** Each Zilla Parishad/ DRD, Intermediate Level and Village Panchayat shall independently prepare and approve, before the beginning of each financial year, an Annual Action Plan equivalent in value of about 125 percent of its share of funds allocated in the preceding year. No work can be taken up unless it forms part of the Annual Action Plan. The exercise of approval of Annual Action Plan should be completed by the end of February of the preceding financial year.
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> 2. To ensure meaningful utilization of resources under the SGRY routine division of resources among the wards of the Gram Panchayat and among the Constituencies of the Panchayat Samiti and of the Zilla Parishad is prohibited. Works included in the Annual Action Plan should be need based and properly prioritized. Looking to the priorities of works and the availability of resources only that many works should be taken up which can be completed within a year and in exceptional circumstances in a maximum period of two years.
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> 3. While preparing the Annual Action Plan, completion of the incomplete works including those of the EAS/JGSY should be given priority over the taking up of new works. No work shall be taken up which cannot be completed in one year or at the most within two financial years."

The petitioner stated in his explanation to the show cause notice that no work so far has been implemented nor even undertaken. 1st respondent has not adverted to this plea in the order impugned in the writ petition. It is not clear from the order impugned in the writ petition as to whether the amounts were spent after ratification of the administrative sanctions by the respective standing committees. The petitioner placed on record various resolutions where under administrative sanctions of the petitioner have been ratified by the respective committees. The petitioner has not referred those resolutions in the explanation to show cause notice. Had the petitioner referred those resolutions, the 1st respondent must have taken into consideration and the outcome of the show cause notice, in my considered view, would not have been in a way which resulted in passing the order impugned in the writ petition.

21. The next serious allegation made against the petitioner is with regard to effecting transfer of employees' inspite of there being a ban order. The petitioner took the plea that all the proposals for transfers were put up by the Chief Executive Officer and therefore he is not responsible for contravention of ban orders, if any. The learned Advocate General placed on record copies of note files relating to the transfer of employees. At this juncture, it is trite to refer the Government Orders where under ban on transfers have been imposed. The Government issued consolidated instructions with regard to the transfer of employees in G.O.Ms.No.767, dated 21.8.2002 where under all transfers are banned with immediate effect except the following:

i. Transfers, which are inevitable on account of disbandment of posts, reversions, retirements, promotions, repatriations, deputations and disciplinary proceedings.

ii. Transfers in respect of skilled doctors in Tubectomy/Vasectomy in A.P. Medical and Health Services. District Collectors are permitted to affect the transfers of doctors within their district only.

iii. Transfers in respect of employees within Adilabad and from outside to Adilabad district.

iv. Transfers from outside to any of the Backward Mandals notified by the Planning Department.

v. Transfers involving posting of married couples in the same place. Only one of the spouses can be shifted following the prescribed procedure.

vi. Transfers of Government Servants on medical grounds for the diseases (either self, or spouse or dependent children) of Cancer, heart Operation, neuro Surgery, Bone, T.B., Kidney transplantation to places where such facilities are available.

vii. Transfer of employees on account of poor performance following due procedure laid down in para 4 below.

viii. The employees on leave for less than three months shall be given posting orders to the places from where they proceeded on leave. For leave of more than three months, it is not necessary to keep the post vacant for so long. In such cases for Gazetted and Non-Gazetted officers returning from leave of more than three months the authority competent to transfer is authorized to issue posting orders at his level to any vacant post available in the Department.

ix. Transfers approved by the Government following due procedure.

22. Learned senior counsel appearing for the petitioner submits that all the transfer orders are coming within the purview of the exceptions mentioned in the above-referred categories of the Government Order. He placed on record a list containing the names of some of the employees, who have been transferred from one place to the other, and the grounds for transfer. The petitioner has not chosen to indicate the details in the explanation offered to the show cause notice. However, the note files placed on record by learned Advocate General are self-explanatory. Since the petitioner himself has not submitted details in the explanation, 1st respondent cannot be found fault in not referring the grounds of transfer in the order impugned in the writ petition. Both the 1st respondent and the petitioner are equally to be blamed for not detailing the grounds on which transfers are affected. Had the petitioner mentioned the grounds on which transfers have been affected in his explanation, 1st respondent would have definitely considered those grounds while passing the order impugned in the writ petition.

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23. In view of the above discussion, this writ petition is allowed setting-aside the

order impugned in the writ petition and directing the Government to reconsider the matter keeping in view all the resolutions passed by various standing committees of Zilla Parishad, Warangal and various note files relating to transfer orders, and pass appropriate orders. The petitioner is at liberty to furnish any additional material in support of his explanation submitted by him to the show cause notice. The 1st respondent shall pass appropriate orders within four weeks from the date of receipt of a copy of this order. No costs.

Dt: 29-12-2005. (**B.Seshasayana Reddy**,J)

Km/tnb

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

W.P.No. 19674 OF 2005

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29th December, 2005